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Dole Fresh Vegetables, Inc. and International Union of Operating Engineers, Local 20, AFL-CIO.
Case 9-CA-38306

May 11, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on March 5, 2001, the Acting General Counsel of the National Labor Relations Board issued a complaint on March 12, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-17437. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 30, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On April 5, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain but attacks the validity of the certification based on its allegation that the lead mechanics, who were included in the unit, are statutory supervisors, and that their involvement with the Union's organizing campaign tainted the Union's showing of interest in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.¹ See *Pittsburgh Plate*

¹ In its response to the Notice to Show Cause, the Respondent argues that the Acting General Counsel's Motion for Summary Judgment should not be granted because the instant case should have been consolidated with Cases 9-CA-38067-1, 2 and 9-CA-38090, which raise issues concerning the supervisory status of the lead mechanics and the validity of the certification in Case 9-RC-17437. On May 1, 2001, the

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, Dole Fresh Vegetables, Inc., a corporation, has been engaged in the processing and wholesale distribution of fresh vegetables at its facility in Springfield, Ohio. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Springfield, Ohio facility goods valued in excess of \$50,000 directly from suppliers located outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 31, 2000, the Union was certified on November 21, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All maintenance employees, including maintenance technicians, maintenance packaging technicians, maintenance parts clerks and maintenance leads, employed by [the Respondent] at its 600 Benjamin Drive, Springfield, Ohio facility, excluding all production employees, quality assurance employees, raw materials employees, sanitation employees, shipping and receiving employees, office clerical employees, all other employees and all professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since about January 19, 2001, the Respondent has refused to bargain with the Union as the representative of the unit. We find that this refusal constitutes an unlawful

Board issued an order denying the Respondent's request for special permission to appeal the administrative law judge's order denying the Respondent's motion to consolidate these cases. Accordingly, there is no reason to consider these issues again in this proceeding.

² Member Hurtgen dissented from his colleagues' decisions in the underlying representation proceeding with respect to the supervisory status of the lead maintenance technicians. However, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co. v. NLRB*, supra. In light of this, and for institutional reasons, he agrees with the decision to grant the Acting General Counsel's Motion for Summary Judgment.

refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 19, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Dole Fresh Vegetables, Inc., Springfield, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 20, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All maintenance employees, including maintenance technicians, maintenance packaging technicians, maintenance parts clerks and maintenance leads, employed by [the Respondent] at its 600 Benjamin Drive, Springfield, Ohio facility, excluding all production employees, quality assurance employees, raw materials employees sanitation employees, shipping and receiving employees, office clerical employees, all other employees and all professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Springfield, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 9 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 19, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 11, 2001

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 20, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All maintenance employees, including maintenance technicians, maintenance packaging technicians, main-

tenance parts clerks and maintenance leads, employed by us at our 600 Benjamin Drive, Springfield, Ohio facility, excluding all production employees, quality assurance employees, raw materials employees sanitation employees, shipping and receiving employees, office clerical employees, all other employees and all professional employees, guards and supervisors as defined in the Act.

DOLE FRESH VEGETABLES, INC.